

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

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In RE:	)
Interim Final Rule	)
Docket OST-2002-11334	)
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TSA Security Fee Structure	)
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**Comments of the  
NATIONAL AIR CARRIER ASSOCIATION, Inc.**

**With Regard To The Rule**

**On**

**Transportation Security Administration's Interim Final Rule on  
Aviation Security Infrastructure Fees**

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**Ronald N. Priddy  
President  
National Air Carrier Association, Inc.  
910 17<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20006**

**APRIL 2, 2002**

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The National Air Carrier Association (NACA) respectfully submits the following comments on behalf of its member air carriers<sup>1</sup>.

In the February 20, 2002, edition of the *Federal Register*, Vol. 67, No. 34, pp. 7925-7938, the Transportation Security Administration (TSA) published Interim Final Rules with respect to the establishment and payment of Aviation Security Infrastructure Fees. These fees will be in addition to the "September 11th Security Fee" imposed on passengers and would be intended to help defray TSA costs to provide aviation security services at more than 400 domestic airports.

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<sup>1</sup> Air Transport International, American Trans Air, Champion Air, Express.Net, Falcon Air Express, Gemini Air Cargo, Miami Air International, North American Airlines, Omni Air International, Ryan International Airlines, USA 3000 Airlines, and World Airways.

Our nation was painfully reminded of just how important airline security is with the horrific terrorist attacks on the World Trade Centers, the Pentagon and a foiled attempt against other important National interests and infrastructure that crashed in Pennsylvania on September 11. The failure to prevent these attacks was not a failure of airline security procedures, but was a basic failure of our national defense. Thus, we believe that the federalization of airline security was a long overdue decision in our National Security Strategy. For many years, NACA and its member airlines have advocated this move, specifically as members of the Federal Aviation Administration's Security Baseline Working Group, but also in our comments in the Vice President's Commission on Aviation Safety and Security in 1996 and 1997. Federalization of transportation screening was also our position provided to Congress and the Bush Administration in the immediate aftermath of the September 11<sup>th</sup> attacks.

Since September 11<sup>th</sup>, NACA has strongly supported the necessary and important changes made in aviation security by Congress and the Bush Administration. We are optimistic that the implementation of this federalized system will improve security, restore Public confidence in the safety of our transportation infrastructure, and contribute to the restoration of our nation's economy. The traveling and shipping public deserve no less than the most advanced and reliable airline security system. NACA commends the TSA for the speed in which it has thus far assumed its new security duties and is ready to assist in any way possible in the future. We were committed to being a responsible partner in the past; we will continue to be in the future.

The Interim Final Rule (IFR) notes that TSA is considering the possibility of holding a public meeting on this matter and, if so, will issue a separate document in the Federal Register to inform the public as to the exact date and location of such a meeting. We encourage TSA to do so prior to May 1, 2002, so that interested airline participants may learn the results of the meeting and finalize their required cost data accordingly.

With regard to the TSA Security Fee structure, we agree with the intent and much of the detail of this interim final rule. However, we have several significant

concerns with the proposal, and we are providing recommendations for several changes. Before providing those, we would like to acknowledge and endorse the comments to this Docket submitted by the Air Transport Association of America (ATA) and by the American Institute of Certified Public Accountants (AICPA). However, while our concerns are similar, because of the differences in operations conducted by the NACA member carriers, our solutions may require slightly different recommendations and considerations.

1. Section 1511.5(d) requires ***“Each air carrier and foreign air carrier that paid for the screening of passengers and property in calendar year 2000 must fully complete the form set forth in Appendix A to this part titled, “Calendar Year 2000 Costs Paid for Passenger and Property Screening,” and submit the completed form to the Transportation Security Administration by May 18, 2002.”***

NACA's member airlines are not able to provide all of the data requested in the table in Appendix A, as the actual costs of screening our passengers is rarely paid directly to the screening company by the Air Carrier. Also, as was noted in the comments of ATA, the contracts for passenger and baggage screening do not contain most of the cost items requested by TSA, so most of the information required is simply not in our accounting systems. While we endorse the revised Appendix A cost categories recommended by ATA, for many NACA member airlines, even those categories are not often available. Significantly, security charges paid in 2000 by NACA member carriers were most often embedded in a total per passenger fee for the use of airport terminals, facilities and equipment. In most cases, it is not possible to get a general breakout of the security screening fees in the passenger facility charges, and certainly the detail requested by TSA is not available within the records of our member carriers. Thus, most NACA member carriers will need the widest latitude for determining their true passenger screening costs under the second paragraph in Appendix A in the IFR which permits air carriers to use “an appropriate alternate cost assignment methodology”. For the external costs, most members will need to use a combination of detailed passenger departure data multiplied times a sampling of invoices from various airports throughout the calendar year 2000 period. When actual security charges cannot be estimated at a particular airport, carriers may need to use security charges at other similar airports to develop a rate. Concerning direct air carrier

costs, because most employees involved in security screening have several other job functions, it will be necessary to allocate only portions of their full cost to security screening.

2. Section 1511.7 of the IFR mandates the payment schedule for CY 2000 costs. Each individual air carrier is directed to pay a significant portion of the calculated Calendar Year (CY) 2000 passenger screening costs by May 31, 2002. The amount required is approximately 20 percent of the total CY 2002 costs (3.273% for February plus 8.33% for each of March and April). It is estimated that the majority of NACA's member airlines will not have sufficient cash reserves to pay the amounts required by that date without significant hardship. The reason is that charter operations, in particular, have contracts for carriage that are established between the Tour Operator and the air carrier on a program-wide basis well in advance of operations, as are the contracts between the Tour Operator and the individual passenger. Thus, in this brief period between now and May 31, we have no way to recoup our costs from the traveling public before we must pay TSA. Furthermore, passenger air carriers have not received all the compensation authorized by Congress under the Air Transportation Safety and System Stabilization Act, P.L. 107-42. Until the Department of Transportation has paid passenger air carriers the remaining 15 percent owed under that program, carriers should not be required to make their first payment to TSA under this IFR.

Even then, the first payment as required will significantly diminish current operating cash and may require air carriers to seek commercial loans in order to pay TSA, which may or may not be available to some carriers. Under an era of significant increases in operating costs and under the current poor economic climate, we believe paying such a large portion of cash is damaging to smaller air carriers, and the schedule of payments should be restructured.

To reduce the burden on carriers, we recommend TSA revise the figure to twelve (12) percent to be paid by May 31, 2002, or, if delays are granted for any reason, in the first payment whatever the date. The remainder of the payments should then be prorated over the remaining months through the payment required for February 2003. It

is important to note that this will not reduce the overall cost carriers will have to pay within this period, but will merely space payments so carriers are better able to adjust to these higher up-front costs. Beyond the payment for February 2003, the 8.33 percent of CY 2000 costs paid each month appears reasonable.

3. Section 1511.9, accounting and auditing requirements, specifies that carriers submit an audit performed by an independent CPA by July 1, 2002. We believe this requirement is unnecessary, if not onerous, for all the reasons provided in the comments of the ATA and the AICPA referenced above. Additionally, we believe that the hours to accomplish this audit as suggested in the IFR (i.e., 40 hours to develop the data and 120 hours to audit) are grossly understated. While we agree with ATA and AICPA that there may be a need to develop Agreed Upon Procedures (AUP's), the AUPs should be established to accomplish a process by which the Government will audit individual air carrier costs as specified in Section 1511.11, on an as needed basis after air carrier cost reports have been submitted. The airlines have a basic duty to be accurate to the best of their abilities under penalty of law as we are reminded in Section 1511.13. No other audit is required.

Finally, the preamble of the IFR makes it clear that TSA also has a duty to justify their costs over the next several years, and TSA may require increased fees to be paid by air carriers after 2004. NACA reminds TSA and the Department of Transportation that the first obligation of any government is security of its population and infrastructure. Aviation security is no exception. While we strongly believe that some of the responsibilities for the costs of National Security may be directly tied to the costs of implementation and maintenance of the transportation infrastructure through user fees, any aviation security funding required over and above those specified in this IFR and the IFR on the "September 11th Passenger Security Fee" should be the responsibility of the general public and paid from the General Funds of the U.S. Government. As events of September 11 have shown, airline security, now more than ever, is a basic security function of the U.S. Government to protect its citizens. The public does not pay for individual instances of the exercise of the U.S. military or of state and local police

assistance or protection, since they serve a greater public good. Beyond the fees already required in these two recent IFRs, the same can be said for aviation security.

Respectfully Submitted,

Ronald N. Priddy  
President  
National Air Carrier Association, Inc.

Date: April 2, 2002